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Security Council

Sixtieth year

Provisional

5216th meeting

Wednesday, 29 June 2005, 10 a.m.

New York

President:	Mr. De La Sablière	(France)
Members:	Algeria	Mr. Benmehidi
	Argentina	Mr. Esremé
	Benin	Mr. Zinsou
	Brazil	Mr. Sardenberg
	China	Mr. Wang Guangya
	Denmark	Ms. Løj
	Greece	Mr. Vassilakis
	Japan	Mr. Kitaoka
	Philippines	Mr. Baja
	Romania	Ms. Matei
	Russian Federation	Mr. Dolgov
	United Kingdom of Great Britain and Northern Ireland	Sir Emyr Jones Parry
	United Republic of Tanzania	Mr. Mahiga
	United States of America	Mr. Scott

Agenda

Report of the Secretary-General on the Sudan

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05-40242 (E)

The meeting was called to order at 10.15 a.m.

Adoption of the agenda

The agenda was adopted.

Report of the Secretary-General on the Sudan

The President (*spoke in French*): In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court.

It is so decided.

I invite Mr. Moreno-Ocampo to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them a letter dated 31 January 2005 from the Secretary-General addressed to the President of the Security Council (S/2005/60) transmitting the report of the International Commission of Inquiry on Darfur to the Secretary-General pursuant to resolution 1564 (2004).

At this meeting, the Security Council will hear a briefing by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court. I now give him the floor.

Mr. Moreno-Ocampo: I welcome this opportunity to address the Security Council on the activities and planning undertaken by my Office since the adoption of resolution 1593 (2005).

Immediately following the adoption of the resolution, we established a Darfur team with staff of the three divisions of the Office and initiated an extensive process of information-gathering and analysis.

On 5 April 2005, my Office collected more than 2,500 items, including documentation, video footage and interview transcripts that had been gathered by the International Commission of Inquiry on Darfur. On that same day, I personally collected a sealed envelope containing the list of 51 individuals identified by the Commission as potentially bearing responsibility for crimes. My Office will conduct its own independent investigation in order to determine those persons who must be prosecuted. The list is for advice purposes and will remain sealed.

Prior to the commencement of a formal investigation, the Rome Statute requires the Prosecutor to determine whether there is a reasonable basis to proceed with an investigation. That determination is made following consideration of the three factors set out in the Statute: first, whether the information provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been, or is being, committed; secondly, whether the case is or would be admissible under article 17; and, thirdly, whether, taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

In addition to the Commission's material, my Office has collected more than 3,000 documents from a variety of other sources, has been in contact with more than 100 groups and individuals and has interviewed more than 50 individuals with specific expertise on the situation in Darfur.

There is a significant amount of credible information disclosing the commission of grave crimes within the jurisdiction of the Court having taken place in Darfur. Those crimes include the killing of thousands of civilians and the widespread destruction and looting of villages, leading to the displacement of approximately 1.9 million civilians. The living conditions resulting from those crimes have led to the deaths of tens of thousands from disease and starvation, particularly affecting such vulnerable groups as children, the sick and the elderly. Information also highlights a pervasive pattern of rape and sexual violence.

In addition to those crimes, my Office has received information showing the persistent targeting and intimidation of humanitarian personnel.

In the light of the complementarity regime and article 53(1)(b) of the Statute, I am required to consider whether there could be cases that would be admissible within the situation in Darfur. The Office has studied Sudanese institutions, laws and procedures. We have sought information on any national proceedings that may have been undertaken in relation to crimes in

Darfur. We have also analysed the multiple ad hoc mechanisms that were created by Sudanese authorities in 2004 in the context of the conflict in Darfur, including the committees against rape, the special courts and the specialized courts that replaced them, the national commission of inquiry and other ad hoc judicial committees and non-judicial mechanisms.

Following that analysis, I determined that there are cases that would be admissible in relation to the Darfur situation. That decision does not represent a determination on the Sudanese legal system as such but is essentially a result of the absence of criminal proceedings related to the cases on which my Office will focus.

The admissibility assessment is ongoing. Once specific cases are selected, my Office will again assess whether or not those cases are, or have been, the subject of genuine national investigations or prosecutions.

The Office also examined issues relating to the interests of justice. Taking into account all those factors, on 1 June 2005 I decided to initiate an investigation in relation to the crimes committed in Darfur.

After my decision, the Government of the Sudan provided my Office with information relating to the establishment of a new specialized tribunal to deal with some individuals considered to have been responsible for crimes committed in Darfur. As part of the ongoing admissibility assessment, my Office will follow the work of the tribunal.

The full support of the international community will be essential to carry out our investigation. Paragraph 2 of resolution 1593 (2005) requires the Government of the Sudan and all other parties to the conflict in Darfur to cooperate fully with and provide necessary assistance to the Court and the Prosecutor. It also urges all States to cooperate fully with the Prosecutor and the Court.

Specific requests for assistance were not issued to the Government of the Sudan or other parties to the conflict during the preliminary analysis phase. However, since the referral, I have two exploratory meetings in April and May in the Netherlands with officials of the Government of the Sudan. Members of my Office have also held exploratory meetings with other parties to the conflict in Darfur in order to establish channels for communication and future cooperation.

Paragraph 3 of resolution 1593 (2005) invites the Court and the African Union to discuss practical arrangements for facilitating the work of the Prosecutor and the Court, including the possibility of conducting proceedings in the region. Following the referral of the situation, a delegation of the International Criminal Court (ICC) went to Addis Ababa to finalize the negotiations of a relationship agreement with the African Union, which had started in 2004, and to meet with officials of the African Union. The discussions successfully ended in an agreed text, which the Court hopes will be signed soon.

In May, I also met with President Obasanjo, in his capacity as President of the Federal Republic of Nigeria and President of the African Union. At that meeting, I recognized the importance of traditional mechanisms for justice and reconciliation.

My Office is in the process of concluding necessary agreements and arrangements with various other organizations. The United Nations Relationship Agreement concluded in October 2004 provides an existing framework for cooperation with the Court. In addition, my Office has developed contacts with other organizations, such as the Arab League, that are playing a role in seeking an end to the conflict in Darfur.

The International Criminal Court received the referral of the situation in Darfur in the capacity of a well-developed institution. Preparations for investigations relating to Darfur are advancing rapidly. The recruitment of additional personnel is well under way and the selection process will conclude in July.

Analysis and planning related to evidence collection and legal strategies are already at an advanced stage. A database has been created and key analytical and research tools have been developed for the investigation. Protocols and systems have also been developed to handle disclosure obligations and the investigation of exonerating circumstances, as well as the storage of evidence and the use of information from sensitive sources. It is vital to take all available steps to preserve information and materials that may form part of the evidence in future proceedings.

The protection of victims and witnesses is a major challenge in any conflict situation and a core

responsibility shared by my Office and the Registry. The information currently available highlights the significant security risks facing civilians and local and international humanitarian personnel in Darfur. Those issues will present persistent challenges for any genuine investigations, international or national.

Communication of the ICC's activities will be vital to ensuring understanding of and participation in the process. We will take all possible steps to bring the proceedings closer to those affected by the crimes. That may include the establishment of ICC presences and the conduct of proceedings at places within the region.

In the coming weeks and months, my Office will request the cooperation of the Government of the Sudan and all other parties to the conflict in Darfur. We will also request the assistance of other States and intergovernmental and non-governmental organizations. The language of resolution 1593 (2005) must be converted into reality as soon as possible. The continued reporting to and engagement of the Security Council on those matters will be vital.

We are also vigilant to the ongoing commission of serious crimes in Darfur. The commencement of the investigations marks an opportunity for all parties to take all possible steps to prevent the continuation of such offences.

The referral of the situation in Darfur to the International Criminal Court has brought an international, independent and impartial justice component to the collective international and regional efforts to end the violence in Darfur. My Office will identify those individuals who bear the greatest responsibility for the crimes and assess the admissibility of the selected cases. My Office will work expeditiously to those ends, conscious of the high evidential threshold for criminal responsibility imposed by the Rome Statute.

Additional efforts will be required to bring other offenders to justice and to promote the rule of law and reconciliation. That has particular significance in the context of Darfur, where tribal and traditional systems exist for the promotion of dispute resolution. My Office will cooperate with and support such efforts, the combination of which will mark a comprehensive response to the need for justice in Darfur.

The President (*spoke in French*): I thank Mr. Moreno-Ocampo for his briefing.

In accordance with the understanding reached in the Council's prior consultations, I now invite Council members to a private meeting following the adjournment of this meeting.

The meeting rose at 10.30 a.m.